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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. DONALD MITCHELL JOHNSON, <i>aka Ski Johnson,</i> Defendant.	CR 14-28-BU-DLC UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL (Doc. 101)
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A jury convicted defendant Donald Mitchell Johnson of Wire Fraud in violation of 18 U.S.C. § 1343. He now moves the Court for a judgment of acquittal. (Doc. 101.) Johnson's motion should be denied. The evidence presented at trial demonstrated that Johnson made

material false statements in a scheme to defraud Big Brothers Big Sisters of Gallatin County of money and property.

PROCEDURAL BACKGROUND

Johnson proceeded to trial on July 27, 2015. He moved for a judgment of acquittal both at the end of the United States' case-in-chief and its rebuttal case. Both motions were denied. (Doc. 93.) The jury convicted Johnson on July 28, 2015. *Id.* Johnson now renews his motion for a judgment for acquittal. (Doc. 101.)

ARGUMENT

To resolve a Rule 29 motion, the Court must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). Wire fraud requires the government to prove (1) a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises; (2) use of wires to further the fraudulent scheme, and (3) specific intent to defraud. *See* 18 U.S.C. § 1343; *United States v. French*, 748 F.3d 922, 935 (9th Cir. 2014).

Further, a defendant's false statements must be material; that is, they must have a natural tendency to influence, or be capable of influencing, a person to part with money or property. *See Neder v. United States*, 527 U.S. 1, 16, 20 (1999).

In the present case, a rational jury was presented with sufficient evidence to convict Johnson. In particular, Barb Rooney and Anna Reardon testified that Johnson, using his name or an alias, claimed that he was a Grammy-nominated artist representing a children's cancer charity. Johnson was not a Grammy-nominated artist, and he used Jazz for Life funds for his personal expenses. Johnson also falsely represented to Rooney that he is a representative of Sony. A rational jury could have concluded that Johnson's statements were false and had a natural tendency to influence, or were capable of influencing, a person to part with money or property.

On July 17, 2012, Anna Reardon sent an email to Johnson's associate asking for a mailing address to send proceeds from the sale of Grammy tickets, which are not authorized for resale. Later that day, Johnson, using the alias Kevin Wright, wrote back and provided

Johnson's home address. The email was routed through AOL's server in Dulles, Virginia.

CONCLUSION

The United States respectfully requests that Johnson's motion for a judgment of acquittal be denied.

Respectfully submitted this 17th day of August, 2015.

MICHAEL W. COTTER
United States Attorney

/s/ Chad C. Spraker
Assistant U.S. Attorney
Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to D. Mont. LR 7.1(d)(2) and CR 12.1(e), this Response is proportionately spaced, has a typeface of 14 points or more, and the body contains 457 words.

/s/ Chad C. Spraker
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